

ASSIGNMENT

BY

LCI 201 GROUP 15

COURSE: LAW OF CONTRACT 1 (LCI 201)

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July, 2025

QUESTION:

Ronaldo, a world-acclaimed footballer signed a mouth-watering contract with a Saudi Arabian club side. The contract was reduced in writing in Arabic language, a clause in the agreement states that the footballer is only allowed to travel out of the Kingdom of Saudi Arabia once in a year and a breach of clause will entitle the club to forfeit the footballer's allowance for one (1) week. Ronaldo on the other hand assumed the contract allowed him to travel four (4) times within a year. In spite of Ronaldo's inability to read and comprehend the contents of the contract papers, he went ahead to sign the contract on the instruction of his agent. Ronaldo travelled thrice (3 times) within a year and the club insisted on forfeiting his monthly allowance. Ronaldo is now upset with the club's action. Advise the parties.

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1. INTRODUCTION

Before delving into the answer to the question, it is important to give a brief introduction of what a contract is. In legal terms, not all agreements are contracts. For an agreement to be recognised and enforced by the courts, it must contain certain essential features. A contract is more than a mere exchange of promise, it is a deliberate, lawful arrangement that creates binding obligations between parties. Contract is generally defined as an agreement which the law will enforce or recognize as affecting the legal rights and duties of the parties. In the case of *Kabo Air v. Tarfa*¹, Galadima J.C.A as he then was, held that a contract must be an agreement which is legally binding on the parties to it and which if broken, may be enforced by action in a court against the defaulting party. For a contract to be binding, it must contain the five essential elements. These elements were well enunciated by the court in the case of *Guarantee Trust Bank Plc. v. Udoka Ayanwu*² where the court stated that;

“A contract is an agreement which the law will enforce or recognize as affecting the legal rights and duties of the parties. A contract is also a promise or set of promises the law will enforce. There are five ingredients that must be present in a valid contract: offer, acceptance, consideration, intention to create legal relationship and capacity to contract. All the five are autonomous and equal in the sense that a contract cannot be formed if any of them is absent. In other words, for a contract to exist in law, all the five ingredients must be present. For a contract to exist, there must be mutuality of purpose and intention; the two contracting parties must agree. One of the fundamental principles of the law of contract is that the parties must reach a consensus ad idem in respect of the terms thereof, for the contract to be regarded as legally binding and enforceable. The two or more minds must meet at the same point, event or incident. Where they say different things at a different times, they are not ad idem and therefore no valid contract is formed. So the meeting of minds of the parties is the most crucial and overriding factor or determination in the law of contract.”

This submission will explore the element of capacity through the lens of a contractual dispute involving Cristiano Ronaldo, a globally renowned footballer. Ronaldo entered into a lucrative contract with a Saudi Arabian football club, which was drafted exclusively in

¹ {2004} 6 WRN 128 at 138

² {2011} 46 WRN 159 at p. 173

Arabic. A dispute later arose over a restrictive clause that he allegedly misunderstood. This scenario raises important legal questions as to whether a valid and enforceable contract was formed, and whether the core elements required by law were truly present. This case tilts more towards capacity to contract as an element of contract; thus, the next heading will speak about capacity to contract.

2. CAPACITY TO CONTRACT

The capacity to contract has been said to be one of the five elements of a valid contract, the other four being offer, acceptance, consideration and an intention to enter legal relations. Where a party lacks the legal capacity to enter into a contract, such a contract may be unenforceable against that party. In the law of contract, there are certain people the law seeks to protect. This protection is for people who, because of their circumstances, can easily be exploited or defrauded in the making of bargains. These set of people include illiterates, infants, lunatics and drunkards. Contracts involving these persons may either be void, voidable or unenforceable against such party. A void contract is one that is invalid from the onset (void ab initio) and has no legal effect whatsoever, a voidable contract is one that is unenforceable against the party lacking capacity and upon attainment of capacity, can either be ratified or repudiated.

- **Infants**

According to common law, the age of 21 years has been fixed as the age in which an individual has absolute and unlimited legal capacity to contract. However, the United Kingdom changed this position with the Family Law Reform Act 1969, which reduced the age of majority from 21 to 18. It was argued by some that the age of maturity has to do with personal law and should be governed by customary law which is the age of puberty. The debate was finally settled in the case of *Labinjo v. Abake*³ where the court decided that due to the fact that the *Infant Relief Act 1874* was a Statute of General Application, the age of majority in Nigeria is 21 years. Thus, contract with an infant for loans, contracts for goods (apart from necessary goods) and account stated are absolutely void. Exceptions exist in contracts for necessary goods and beneficial contracts of service where the contract is binding

³ {1924} 5 N.L.R. 33

on the infant. For example, in the case of *Nash v. Inman*⁴, the plaintiff was unable to enforce the contract against the infant because it wasn't relating to necessities.

- **Lunatics**

As regards lunatics, contracts made by a lunatic can be classified into “contracts for necessities” and “contracts for other things”. *Section 2 of the Sales of Goods Act 1893* provides that where necessities are sold and delivered to a person, who by reason of mental incapacity or drunkenness is incompetent to contract, he must pay a reasonable price therefore. ‘Necessaries’ means goods suitable to the condition in life of the person concerned and his usual requirements at the time of sale and delivery. Where the goods are not necessary goods, the lunatic is bound by his contracts unless he can show that i) owing to his mental condition, he did not understand what he was doing and that ii) the other party was aware of his incapacity. Where he is able to prove this, the effect is to make the contract voidable at his option. However, a contract made by a lunatic during his lucid period is binding on him.

- **Drunkards**

A person in a position of intoxication is in the same situation as a lunatic. If a drunkard enters into a contract in a state of intoxication where he did not know what he was doing and the other party is aware of the fact, the contract is voidable at his option. A drunkard can ratify the contract when he becomes sober. With regards to necessary goods, as is provided in *Section 2 of the Sales of Goods Act*, the drunken person is obliged to pay a reasonable price for such goods sold and delivered to him.

The question under consideration borders on the capacity of an illiterate, so further explanation on it will be given subsequently. We will now delve into the solution to the problem question above.

This case is about a contract between Ronaldo, a well-known footballer, and a Saudi Arabian club. The contract was written in Arabic, which Ronaldo could not read or understand. He signed it based on the instruction of his agent. A clause in the contract limits how many times he can travel out of Saudi Arabia in a year. Ronaldo broke this clause because he misunderstood it, and now the club wants to punish him by taking away part of his allowance. This raises important questions under contract law about whether Ronaldo is

⁴ {1908} 2 K.B. 1

bound by the contract he could not read, and whether the club's action is right; that is, the club forfeiting Ronaldo's allowance because he travelled out of the country more than once in a year, which is against what the written contract says .

3. ISSUES

- 1) Whether or not Ronaldo is an illiterate.
- 2) Whether or not Ronaldo is bound by the travel clause in the contract despite his lack of understanding of its Arabic contents.
- 3) Whether or not Ronaldo's reliance on his agent's advice makes him bound and liable for breach of contract
- 4) Whether or not the club can enforce the forfeiture of his monthly allowance.

4. RULES

RULE 1

It is a principle of law that parties to a contract must agree on all terms for a contract to be valid. This view was upheld in the case of *Smith v. Hughes*⁵, where the court held that a contract is only enforceable where there is an agreement of all parties to the terms of the contract. This also raises the pivotal issue of consensus ad idem (meeting of minds). It is also a principle in law that consensus ad idem is a crucial and overriding factor in the formation of a contract. In the case of *Guarantee Trust Bank v. Udoka Ayanwu*,⁶ the court stated that the two or more minds must meet at the same point, event or incidents, in the absence of this, no valid contract is formed. It is also an established principle of law that parties to a contract are bound by the terms of the contract as seen in the case of *A.G Rivers State v. A.G. Akwa Ibom State*⁷ following the principle of "pacta sunt servanda". However there are exceptions to this principle, there are some categories of people whom the law seeks to protect in order to prevent them from being exploited. One of such is an illiterate. We will now consider what

⁵ {1871} LR 6 QB 597

⁶ {2011} 46 WRN 159 at p. 173

⁷ {2011} 29 WRN 1

qualifies a person to be termed an illiterate. Several judicial decisions have settled the law on who an illiterate is.

In *P.Z & Co. Ltd. v. Gusau and Kantoma*,⁸ the court took the view that “illiterate” meant, illiterate in the language used in the document under consideration. It is irrelevant that the defendant might be literate in some other language. The *Illiterate Protection Act*⁹ does not supply any definition of the expression “illiterate person” in *section 3*, however an illiterate is considered to be anyone who is unable to read and understand the document in question in the language in which it is written. The judicial decision in *Osefor v. Uwania*,¹⁰ is also worthy of note. It is a case in which the defendant/debtor claimed that he was not liable to repay a debt because he was an illiterate person and the plaintiff/creditor, had failed to comply with *section 3 of the Illiterates Protection Act*, the court had to consider what constituted illiteracy for the purpose of the act. An illiterate person according to Oputa J. as he then was “...is a person who is unable to read with understanding, the document made or prepared on his behalf... Illiteracy is thus purely comparative. Thus, a graduate in English may well be an illiterate in German”. This case underlines that the substance of illiteracy is not merely about formal education but actual comprehension of the specific contractual language. This definition was also upheld in the case of *S.C.O.A. Zaria v. Okon*,¹¹ where the court held that a person may be sufficiently literate to sign his name and read figures, however, he may not be sufficiently literate to understand the meaning and effect of the document he is signing, and in such a case, the provisions of *section 3 of the illiterates protection act* must be complied with.

Thus, by reason of these court decisions, we can conclude that *an illiterate is someone who does not understand the language in which a document which he signed is written*, though he may be literate in other languages.

RULE 2

Under the Nigerian Law of Contract, one of the most fundamental principles is that contracts are generally binding on the parties that enter into them, once all the elements

⁸ {1961} N.R.N.L.R. 1

⁹ *Labinjoh v. Abake* 1924} 5 N.L.R. 33

¹⁰ {1971} 1 All NLR (ALR) 421

¹¹ {1959} 4 FSC 220 at 223

necessary to create a valid agreement are present. However, the law recognizes that there are vulnerable classes of persons who may enter contracts without a full understanding of the implications, and such individuals may require special legal protection. Among these are illiterate persons.

It is an established principle in law that an illiterate is not bound by the terms of a contract if the document was not read and explained to him before he signed the contract. This principle of law is well established in the case of *Ezeigwe v. Awudu*,¹² where the Supreme court held that any agreement concluded with an illiterate person must contain the name, address of the writer and that prior to the document being signed by the illiterate person, *it must be read over and explained to him*. **Section 2 of the Illiterates Protection Law** also reiterates this position of law and it provides that any person who shall write any letter or document at the request, on behalf or in the name of an illiterate person shall also write on such letter or other document his own name as the writer thereof and his address; and his doing so shall be equivalent to a statement

- a) that he was instructed to write such letter or document by the person for whom it purports to have been written and that the letter or document fully and correctly represents his instructions; and
- b) if the letter or document purports to be signed with the signature or mark of the illiterate person, that prior to its being read over and explained to the illiterate person, and that the signature or mark was made by such person.

This means there are some laid down procedures before a contract can be made with an illiterate person, which are; the contract must be read out to him in a language that he understands and that he understands the terms of the document before it is signed and that the writer must also write his name and address on the document. Failure to comply with this provision can render such a document unenforceable against the illiterate party. This principle was echoed in *S.C.O.A. Zaria v. Okon*, where the Supreme Court emphasized that the object of the law is to protect illiterate persons from being defrauded. The court insisted that strict compliance with the requirements of the law regarding illiteracy is mandatory, particularly concerning the writer or interpreter of the contract. The underlying rationale is that the law cannot presume consent where comprehension is lacking.

¹² {2008} 5-6 SC (Pt. 11) 23

The case of *Djukpan v. Orovuyovbe*¹³ further supports this view by affirming that the inclusion of the name and address of the person who wrote or interpreted the document is not a mere formality, but an essential element that allows the court to verify whether the illiterate party was properly informed. Consequently, in the case where an illiterate signed a contract written in another language which he could not understand, and the document was not read over and explained to him in a language he understands, the contract will be unenforceable against the agent. The law presumes that there was no real consensus ad idem – no meeting of the minds. If there is no evidence that the necessary procedural safeguards were followed (such as the use of an interpreter, or the presence of a jurat from the writer or explainer of the contract), then the illiterate person may not be bound by the clause. In practice, courts will scrutinize the facts to determine whether the illiterate party understood what they were agreeing to. The courts may also consider whether the other party acted in good faith and took reasonable steps to ensure understanding. But where the safeguards are absent and there is evidence of misunderstanding or deception, the laws are for the protection of the illiterate so the illiterate is not bound by the contract.

RULE 3

A central doctrine in contract law is that there must be a genuine agreement between the parties, often described as a "meeting of the minds" (consensus ad idem). When a person relies on an agent or third party to explain or interpret the terms of a contract, the enforceability of the agreement will depend on whether the party truly understood the obligations they were entering into. In *Smith v. Hughes (1871)*, the English court established that a contract is enforceable only where there is a clear mutual understanding between parties. In the Nigerian context, this principle interacts with the doctrines protecting illiterate persons and with agency law. If a party signs a contract written in a language they do not understand and does so solely on the advice or assurance of their agent without a proper explanation of the terms, then the party may have a valid defence against the enforcement of such contract. This is particularly relevant where the contract turns out to have adverse consequences that were not explained to them.

¹³ {1967} LCN/1487 (SC)

The relevance of *Foster v. Mackinnon (1869)*¹⁴ is also instructive. In that case, an elderly man signed a document under the mistaken belief that it was something different from what it actually was. The court held that he was not bound by it, since the document had not been properly explained to him. By analogy, a party who signs a contract based solely on an agent's instruction, without understanding the nature of the document, may not be bound where it is shown that the document was materially different from what was believed. In Nigerian law, the responsibility to ensure understanding lies especially heavily on the party seeking to enforce the contract. Where the signer is an illiterate or a person who does not understand the language of the contract, the burden is on the other party (or the agent) to ensure the contents were accurately explained. Failure to do so would result in the contract being unenforceable against the uninformed party. In practical terms, this means that reliance on an agent's advice does not automatically exonerate a party from contractual obligations.

The key question is whether the party fully understood the implications of the agreement. The law will not protect wilful ignorance, but it also does not reward negligent misrepresentation or failure to communicate critical details. To summarize, a party who enters a contract based solely on an agent's guidance may not be completely free of liability, but may successfully argue that the contract is not enforceable if there was no genuine meeting of the minds due to misunderstanding. In situations where illiteracy or language barriers exist, the courts are inclined to protect the uninformed party where procedural safeguards and explanations were absent.

RULE 4

It is a principle in law that a contract cannot be enforced by the writer if it is established that the other party is an illiterate and the contract was not explained to him before he signed the contract. The case of *Osefo v. Uwania*, reiterates this principle. In this case, Oputa J (as he then was) declared that “if a document which does not comply with the **Illiterates Protection Act** creates legal rights and the writer benefits therefrom, those benefits are unenforceable by the writer against the illiterate.” The *Illiterates Protection Act* and similar enactments were passed for the protection of a particular class of persons, viz, illiterate persons. There are four possible effects of non-compliance. It could make the

¹⁴ {1869} LR 4 CP 704

contract illegal, void, voidable or unenforceable. In the first place, although not declaring the contracts void, the courts have held consistently that they are not enforceable at the instance of the 'writer'. In **Agbara v. Amara**,¹⁵ Edozie J.C.A held that; unenforceability is restricted to the writer of the document to prevent him from taking a benefit from the document at the detriment of the illiterate." This position of law is to prevent the illiterate person from being defrauded.

It is also an established principle of law that there must be consensus ad idem (meeting of minds) before a contract can be valid. The case of **Smith v. Hughes** reiterates this position. Thus, clearly the mind of an illiterate person and that of the writer did not meet in the formation of the contract, thus the contract is rendered unenforceable by the writer. The principle of "non est factum" which means it is not my deed is also used by an illiterate person to say that he did not intend what he actually signed due to the fact that he did not understand the terms and it was not explained to him by the writer.

5. APPLICATION

APPLICATION 1

By reason of court decisions such as **P.Z & Co. Ltd. v. Gusau and Kantoma**, inter alia, it has been established that an illiterate person is someone who does not understand the language in which a contract is written, though he may be literate in other languages. It must also be proven that he did not intend or understand the implication of what he is signing because it was not read out and explained to him. Ronaldo in this question does not understand Arabic language which is the language in which the contract was written. In the event that it is successfully proven that the procedural rules guiding contracting with an illiterate which are that the writer must have written his name and address on the document, and that the Saudi Arabian club must have read out and explained the document to Ronaldo in the language that he understands were not abided by, then Ronaldo can be considered an illiterate in this contract.

¹⁵ {1995} 7 NWLR (pt. 410) 712

APPLICATION 2

According to Section 2 of the Illiteracy protection Act and in judicial decisions such as *S.C.O.A. Zaria v. Okon* and *Ezeigwe v. Awudu*, where a contract is made with an illiterate, the writer must write his name and address on the document and *ensure that prior to the document being signed by the illiterate person, it was read over and explained to him*, and that the signature or mark was in fact made by the illiterate person. In a situation where these rules are not followed, the illiterate is not bound by the contract. In Ronaldo's case once it is successfully proven that these procedures were not followed by the Saudi Arabian club, then Ronaldo is considered not to be bound by the contract under the doctrine of non est factum.

APPLICATION 3

In line with the established principle in the law of contract that for a valid contract to be formed, there must be consensus ad idem (the meeting of minds) on all the terms and clauses in the contract as seen in the case of *Smith v. Hughes*. As can also be seen in the case of *Lawal v. G.B Oliviant Ltd.*, where the court said a man may be an illiterate but understand the purport and consequences of the document he is signing after it has been explained to him, in this case Ronaldo is still an illiterate even though he signed it on the instruction of his agent, because he did not understand the purport or consequences of the document and the clause restricting travel. So, in this case, even though Ronaldo signed the document on the instruction of his agent, it can still be argued that since there was no proper explanation of the terms and clauses in the contract, there was no consensus ad idem and therefore the clause is unenforceable in line non-compliance with the provision of ***Section 2 of the Illiterates Protection Act***. While the agent acted within the scope of his authority, Ronaldo's inability to understand the contract coupled with the lack of explanation, renders the contract unenforceable because there was no consensus ad idem.

APPLICATION 4

Upon successful proof that the procedures in ***Section 3 of the illiterates protection act*** were not followed, the club cannot enforce the sanctions. As has been duly stated in the illiterates' protection act and judicial decisions such as *Agbara v. Amara* and *Osefo v.*

Uwania, the laws are for the protection of the illiterate and *the contracts are unenforceable at the instance of the writer to prevent him from taking advantage of the illiterate.*

6. CONCLUSION.

In conclusion, I will advise Ronaldo to sue the Saudi Arabian company as they cannot enforce the sanction of the forfeiture of one week allowance because he is protected by the fact that he is an illiterate and does not have capacity to enter into such contract so the club cannot enforce the punishments against him. He should sue and plead for prohibitory injunction restraining the company from enforcing the forfeiture of the allowance. I will also advise Ronaldo to query his agent for not performing due diligence before instructing Ronaldo to sign the contract.

I will advise the Saudi Arabian to pull back from enforcing the forfeiture of Ronaldo's weekly salary as is seen in the clause because Ronaldo is illiterate of the clause and they did not perform their role under *Section 3 of the Illiteracy Protection Act.*